

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

No. 9:11-CR-36

United States of America

v.

Humberto Colin-Cruz

Defendant

Findings, Conclusions and Recommendations on Guilty Plea

This action is referred to the undersigned United States Magistrate Judge to hear and receive defendant's guilty plea. On September 6, 2011, defendant, defendant's counsel, and the attorney for the government came before the court for a guilty plea and allocution on Count I of the Indictment charging a violation of 18 U.S.C. § U.S.C. 922(g)(5).

Guilty Plea

After conducting proceedings in the form and manner prescribed by Rule 11 of the Federal Rules of Criminal Procedure, and with consent of all parties, the undersigned finds:

- (1) Defendant, after consultation with counsel of record, knowingly and voluntarily consents to pleading guilty before a United States magistrate judge, and did plead guilty to Count I of the Indictment.
- (2) Defendant is fully competent and capable of entering an informed plea; is aware of the nature of the charges and the consequences of the plea; and the

plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.

Accordingly, defendant's guilty plea is accepted, and defendant is bound thereto.

Plea Agreement

- ☐ Defendant's plea is an open plea, i.e., made without a plea agreement.
 - ☒ Defendant's plea is made pursuant to a written plea agreement and stipulation of relevant facts, copies of which were produced for inspection and filed in the record.
 - ☒ The plea agreement is of the type specified in Fed. R. Crim. P. 11 (c)(1)(A) in that the attorney for the government will not bring, or move to dismiss, other charges.
 - ☒ The plea agreement is of the type specified in Fed. R. Crim. P. 11 (c)(1)(B) in that the attorney for the government will recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court).
 - ☐ The plea agreement is of the type specified in Fed. R. Crim. P. 11 (c)(1)(C) in that the attorney for the government will agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).
- ☒ Defendant was advised that the court may defer its decision as to acceptance or rejection of the plea agreement until it reviews the presentence report, and was further advised:
- ☒ if the court rejects the plea agreement's stipulations regarding non-binding sentencing recommendations or requests, defendant will have no right to withdraw the plea;
 - ☐ if the court rejects the plea agreement's stipulations regarding binding sentencing recommendations or requests, the court will give defendant an opportunity to withdraw the plea of guilty; and

- [✓] if the court accepts that part of the plea agreement wherein the attorney for the United States agrees to dismiss or not bring other charges, such agreed disposition will be included in the judgment; but if the court rejects that provision, the court will give defendant an opportunity to withdraw the plea of guilty; and
- [✓] if defendant is given an opportunity to withdraw the plea of guilty, and chooses not to, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

RECOMMENDATIONS

Defendant should be adjudged guilty of the offense to which he has pleaded guilty. The court should defer a decision to accept or reject the plea agreement until it reviews the presentence report.

OBJECTIONS

Upon conclusion of the guilty plea proceedings, all parties stated that they do not object to the findings, conclusions and recommendations stated above.

SIGNED this 6th day of September, 2011.



Zack Hawthorn
United States Magistrate Judge